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IN THE

SUPREME COURT

OF THE

United States

October Term, 1957

MYRTLE MAY DUNN, ALVIN D. DUNN, and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, EXECUTORS OF THE ESTATE OF A. M. DUNN, Deceased; and MYRTLE M. DUNN,

Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation,

Appellees.

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE COUNTY OF LOS ANGELES IN SUPPORT THEREOF

HAROLD W. KENNEDY, County Counsel
LLOYD S. DAVIS, Deputy County Counsel
1100 Hall of Records
Los Angeles 12, California
Attorneys for Appellee County of Los Angeles.

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To the Supreme Court of the United States of America:

The COUNTY OF LOS ANGELES, an appellee herein, hereby moves this court, pursuant to the provisions of Rule 16, subdivision b of the Revised Rules of the Supreme Court of the United States, to make and enter its order dismissing the appeal of appellants

MYRTLE MAY DUNN, ALVIN D. DUNN, and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. DUNN, Deceased; and MYRTLE M. DUNN, upon the following grounds:

1. The appeal does not present a substantial federal question.

2. The federal question sought to be reviewed was not timely or properly raised.

3. The federal question sought to be reviewed was not expressly passed upon by the courts of the State of California.

4. The judgment rests on an adequate non-federal basis.

Said motion will be made upon the record in the above-entitled cause, together with the brief included herewith.

DATED: May 20, 1958.

HAROLD W. KENNEDY, County Counsel
LLOYD S. DAVIS,
Deputy County Counsel
Attorneys for Appellee,
County of Los Angeles.

STATEMENT OF THE CASE

This action was commenced in the Superior Court of the State of California, in and for the County of Los Angeles, pursuant to a complaint containing four causes of action: (1) For declaratory relief; (2) To quiet title; (3) For damages for inverse condemnation; and (4) For an accounting. The demurrer of the County of Los Angeles was sustained as to the second, third, and fourth causes of action and a declaratory judgment was rendered in favor of the County on its motion for a summary judgment. The judgment of the Superior Court was affirmed by the District Court of Appeal, State of California, Second Appellate District, 155 A. C. A. 885, 318 P. 2d 795, and a hearing in the Supreme Court of the State of California was denied.

The allegations of the complaint are substantially as set forth in the Opinion of the District Court of Appeal, which has been attached as an appendix to Appellants' Statement as to Jurisdiction.

These allegations can be summarized as follows:

In 1939, the plaintiffs A. M. Dunn and Myrtle M. Dunn executed a deed conveying to the County of Los Angeles certain ranch property located in the vicinity of Newhall, California, for a consideration of $148,000.00. During the negotiations, Mr. Dunn expressed a desire to retain the mineral rights in said property but was advised by the County's agents that

"he could not reserve the mineral rights under any conditions for the reason that the property was to be used as a prison farm and that in order to protect the property for that purpose that no prospecting or drilling for oil could be made thereon." It was alleged that these representations were false. It was further alleged that the plaintiffs were induced to convey their property by threats made by agents of the County who stated that unless the sale was made the County would condemn the property, which condemnation proceedings would be costly to the plaintiff. It was also contended that the $148,000.00 paid represented only the agricultural value of the property and allowed nothing for the oil potential. In 1950, the County executed an oil and gas lease with The Texas Company, as lessee, and oil and gas of substantial value has since been extracted from said property. Under these facts, the plaintiffs prayed for a judgment declaring the rights of the parties; an accounting for the oil and gas taken from the property; a decree quieting plaintiffs' title to the oil and gas and other minerals underlying the property; and for $50,000,000.00 damages.

The County's demurrer was based upon the failure of the complaint to allege facts sufficient to constitute a cause of action and upon various statutes of limitation. The motion for a summary judgment was based essentially on the same grounds and it placed before the court a copy of the deed by which the property in

question was conveyed, together with the record of the proceedings before the Board of Supervisors of the County of Los Angeles, indicating that the procedural requirements for the purchase of the property by the County had been satisfied.

The judgment ordered that the plaintiffs take nothing by their second, third, and fourth causes of action and declared:

> " . . . that the plaintiffs are not, and neither of them is, the owner of or has any right in or to the oil, gas, or other hydrocarbons underlying the land described in plaintiffs' complaint, either before or after production thereof, and that neither the County of Los Angeles nor The Texas Company holds at this time, or ever was held in any capacity whatsoever, any of the profits taken or received from the said land for or on behalf of the said plaintiffs or either of them."

ARGUMENT

I.

THIS APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

On its face, the complaint is based simply on allegations of fraud or duress with respect to representations made by agents of the County during negotiations for the purchase of certain real property by the County. The allegations are insufficient to constitute a cause of action based upon fraud or duress, being at most expressions of opinion. Furthermore, it would appear that any cause of action that plaintiffs might have possessed was barred by one or more statutes of limitations.

Appellants in their appeals have sought to raise a constitutional question respecting the authority of a public agency to acquire oil and gas rights by eminent domain proceedings. Clearly, this is not an issue in this case. No eminent domain proceedings were ever instituted. The plaintiffs, dealing at arm's length with the County, deeded their property without reservation of the mineral rights. The question as to the interest in land conveyed by a deed absolute in form is one solely of State law and would involve no Federal question.

Shulthis v. McDougal, 225 U.S. 561, 569; 56 L. ed. 1205, 1210;

United States v. Crosby, 7 Cranch 115, 116; 3 L. ed. 287;
United States v. Fox, 94 U.S. 315, 320; 24 L. ed. 192.

The legal capacity of a County or other political subdivision of a State to acquire a fee simple title to property is likewise a local question.

Laramie County v. Albany Co., 92 U.S. 307; 23 L. ed. 552.

Appellants have argued that Mr. Dunn was induced to deed his property under the mistaken belief that the law authorized the County to acquire a fee simple title by eminent domain proceedings. This argument was answered by the opinion of the District Court of Appeal, where it was pointed out that there could be no mistake of law because the Legislature had specifically authorized the acquisition by eminent domain proceedings of a fee simple title where property was being acquired for public buildings and grounds or where it was being acquired by a County and, furthermore, that any cause of action based upon mistake was barred by the applicable statute of limitations.

The nature of the estate to be acquired in an eminent domain proceeding is normally determined by the Legislature.

Shoemaker v. United States, 147 U.S. 282, 298; 37 L. ed. 170, 184;

United States v. Meyer, (C.A. 7th) 113 F. 2d 387, cert. den., 311 U.S. 706; 85 L. ed. 459.

The California Constitution guarantees a property owner just compensation where his property is taken for a public use. (Section 14 of Article I of the California Constitution). And by statute, Title VII, Part 3, Code of Civil Procedure, the property owner is assured of his day in court unless he waives such proceedings. Therefore, there can be no basis for the contention that plaintiffs' property was taken without due process of law. An entirely adequate judicial proceeding was available to appellants to determine the right of the County to acquire a fee simple title to property and to determine the fair market value of the land taken. Clearly, the availability of such proceedings satisfies the requirements of due process of law.

Fallbrook Irrigation District v. Bradley, 164 U.S. 112, 175; 41 L. ed. 369, 394.

Likewise, there is no merit to appellants' contention that a statute authorizing the acquisition of a fee simple title to real property for a public use would violate the United States Constitution. Normally, where a public agency acquires land for a public institution, such as a prison farm, it requires the exclusive occupancy and control over the land. Under California law, a reservation of the minerals includes with it the right to enter onto the land and extract the minerals irrespective of the damage caused to the surface. In the case

of placer mining, the effect may be to render the property wholly unusuable for other purposes. See, for instance:

Yuba Investment Co. v. Yuba Consolidated Gold Fields, 184 Cal. 469;
Trklja v. Keys, 49 Cal. App. 2d 211.

Oil production may likewise completely destroy the utility of property.

MacDonnell v. Capital Co., 130 F. 2d 311, 320 (C.A. 9th) cert. den. 317 U.S. 692.

It would therefore appear that the Legislature reasonably exercised its judgment in determining that a fee simple title to real property may be acquired for public buildings and grounds.

No issue is raised by the pleadings with respect to the authority of a County to acquire only the oil and gas rights as a separate estate in a parcel of property for the sole purpose of producing oil and gas. Nor has it been contended by any of the parties, that any statute authorizes such an acquisition. Therefore, any arguments presented by appellants with respect to whether or not a County could constitutionally be authorized to acquire oil and gas rights for the limited purpose of producing and selling oil and gas are wholly outside the issues of this case.

Likewise, no issue is raised in the pleadings with respect to the authority of a County to lease lands

owned in fee for the production of oil and gas. A lease executed in 1950 by the County, even if unauthorized, could in no way affect the fee simple title acquired by the County in 1939. This action does not purport to be one in *quo warranto* to test the authority of a County to lease property owned by it in fee. Nor is it a taxpayer's action to restrain the County from entering into such a lease. Appellants' complaint is apparently based on two theories: First, that the conveyance of the property was induced by fraud, duress, and for an inadequate consideration; and, second, that the deed did not convey the oil and gas rights. Clearly, these issues do not present federal questions but involve solely questions of local law.

II.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT TIMELY OR PROPERLY RAISED.

Here the appellants in 1939 had the opportunity to contest the authority of the County to acquire a fee simple title, by requiring the County to proceed with an eminent domain action. If there was any basis for their contention that the California eminent domain procedures violated provisions of the United States Constitution, such contentions could have been specifically raised at that time.

Furthermore, even in the complaint, no issue is raised with respect to the constitutionality of the statutes under which the County acquired this property. The constitutional question was raised for the first time somewhat obliquely in Appellants' Reply Brief and Petition for a Rehearing and primarily for the purpose of statutory construction. Clearly, the question as to the authority of a County to condemn the fee title to appellants' property was neither timely nor properly raised.

III.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT EXPRESSLY PASSED UPON BY THE COURTS IN THE STATE OF CALIFORNIA.

Appellants are here raising the question as to the authority of a County to acquire the oil and gas rights in a parcel of property for the purpose of entering into the oil business. Clearly, such a question was not raised in the pleadings nor was it passed upon by either the trial or appellate courts.

IV.

THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

Both the trial court and the District Court of Appeal concluded that any cause of action that appellants may have had was barred by one or more statutes of limitations and, therefore, the decision rests on an adequate non-federal basis.

It has been held that questions respecting the application of state statutes of limitations do not present a federal question.

Wood v. Chesborough, 228 U.S. 672, 57 L. ed. 1018;

Preston v. Chicago, 226 U.S. 447, 57 L. ed. 293.

We respectfully submit, therefore, that the appellants present no substantial federal question for the decision of this Court, and that the appeal should be dismissed.

HAROLD W. KENNEDY, County Counsel
LLOYD S. DAVIS,
Deputy County Counsel
1100 Hall of Records
Los Angeles 12, California
Counsel for Appellee,
County of Los Angeles.